

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JEANETTE TRUJILLO,

Plaintiff,

vs.

Civ. No. 04-65 ACT/RLP

**MESA VISTA INDEPENDENT SCHOOL
DISTRICT, McGEE & ASSOCIATES, and
PHIL RASBAND**

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court upon Defendants McGee & Associates, P.C. and Phil Rasband's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 37(b)(2)(C) filed August 19, 2004. Docket No. 27. Defendants McGee & Associates, P.C. and Phil Rasband ("McGee Defendants") are seeking sanctions against the Plaintiff for failure to submit her initial disclosures and to respond to discovery requests. Upon review of the pleadings and being otherwise advised in the premises, the Court finds that the motion is well taken in part.

Mesa Vista Independent School District ("School District") removed this matter to federal court on January 23, 2004. At the scheduling conference held on May 12, 2004, the Honorable Judge Richard Puglisi ordered the Plaintiff to provide her initial disclosures. Docket No. 24.

On November 10, 2003, prior to the removal of this matter, McGee Defendants served a First Set of Interrogatories and First Set of Requests for Production on the Plaintiff. Plaintiff responded on January 23, 2004. Resolution of the discovery dispute concerning these discovery requests was delayed once this matter was removed to federal court. On June 24, 2004, McGee Defendants filed

a Motion to Compel Discovery. Docket No. 20. On August 4, 2004, the Court granted McGee Defendants' Motion to Compel Discovery. Docket No. 24. The Order stated that:

Plaintiff shall fully answer Defendant McGee's First Set of Interrogatories Nos. 5,6,7,8,9,10, 11, 12, 13 and 22 and provided (sic) responses to McGee Defendants First Set of Request for Production to Plaintiff as well as provide a complete copy of Plaintiff's initial disclosures to Defendants McGee & Associates and Phil Rasband pursuant to the Court's oral ruling at the Rule 16 Scheduling conference. Plaintiff shall answer and otherwise respond no later than August 13, 2004.

Id.

In response to this Motion, Plaintiff's counsel asserts that he "made every effort to obtain the information from Plaintiff"; that McGee Defendants obtained some of the information from the Narvaez Law Firm which is representing the School District; that the original medical releases are either lost or in the possession of the Plaintiff; that Plaintiff provided identification of the health care providers to the School District; that Plaintiff's damages are "limited to emotional distress damages, future loss promotional damages, and punitive damages...."; and that the School District has Plaintiff's personnel filed. Docket No. 28.

From the above, the court concludes the following:

1. This matter has been pending in federal court since January 23, 2004;
2. Plaintiff has failed to make her initial disclosures;
3. Plaintiff has violated an oral Court order given at a Scheduling Conference to provide her initial disclosures;
4. Ten months after McGee Defendants served the Plaintiff with discovery requests, Plaintiff has failed to respond to McGee Defendants First Set of Interrogatory Nos. 5,6,7,8,9,10,11, 12, 13 and 22 and the First Set of Requests for Production; and
5. Plaintiff has violated a Court Order to respond to these discovery requests and

provide her initial disclosures.

As a sanction for Plaintiff's failure to comply with her discovery obligations the Court will order the Plaintiff to pay the costs and reasonable attorney's fees that the McGee Defendants have incurred in preparing the Motion to Compel Discovery [Docket No. 20] and this Motion [Docket No. 27]. Moreover, the Court will order that the Plaintiff fully comply with the court's order of August 4, 2004 [Docket No. 24] within ten (10) days of entry of this Order. Failure to comply with the order of August 4, 2004 or failure to make payment as directed herein of reasonable attorney's fees and costs will result in dismissal of this action. *Ehrenhaus v. Reynolds*, 965 F.3d 916 (10th Cir. 1992).

IT IS THEREFORE ORDERED that:

1. Plaintiff will fully comply with the court's Order entered August 4, 2004 [Docket 24] within ten (10) days of entry of this Order.
2. Counsel for the McGee Defendants will file with the court an affidavit setting forth details as to the reasonable attorney's fees and other costs they expended in making the Motion to Compel Discovery [Docket No. 20] and Motion to Dismiss pursuant to Federal Rule of Civil Procedure 37(b)(2)(C) [Docket No. 27] within ten (10) days of entry of this order.
3. Plaintiff will have ten (10) days to file any objections to the amount requested by McGee Defendants.
4. After receiving the affidavit from the McKee Defendants' counsel and Plaintiff's objections, if any, the Court will enter an order specifying the amount of attorney's fees and costs Plaintiff must pay. Plaintiff will have ten (10) days from the entry

of that order to make payment of the amount ordered to the McGee Defendants.

5. Plaintiff's failure to fully comply with the Court's Order of August 4, 2004 [Docket No. 24] or the terms of this Order will result in the entry of an order dismissing Plaintiff's claims against the McGee Defendants with prejudice.



ALAN C. TORGERSON
UNITED STATES MAGISTRATE JUDGE